STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LISA ANN WESTON, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	Case No. LA-CE-5723-E PERB Decision No. 2363 March 25, 2014

Appearances: Coalition for Employment and Economic Development by Mamie Grant, Representative, for Lisa Ann Weston; Marcos F. Hernandez, Assistant General Counsel, for Los Angeles Unified School District.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION[1]

WINSLOW, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Lisa Ann Weston (Weston) of a dismissal (attached) by the Office of the General Counsel of her amended unfair practice charge. The charge, as amended, alleged that the Los Angeles Unified School District (District) violated the Educational Employment Relations Act (EERA)[2] and the Meyers-Milias-Brown Act (MMBA)[3] by refusing to allow Weston to rescind a notice of resignation after the District laid Weston off. Weston alleged that this conduct constituted a violation of EERA and MMBA, although she did not specify which sections of either act were allegedly violated.

[1] PERB Regulation 32320(d) provides, in pertinent part: "Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal filed under section 32635 [Board Review of Dismissals] shall determine whether the decision or order, or any part thereof, shall be designated as precedential." Having met none of the criteria enumerated in the regulation, the decision herein has not been designated as precedential. (PERB Regs. are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

[2] EERA is codified at Government Code section 3540 et seq.

[3] The MMBA is codified at Government Code section 3500 et seq.

The Board has reviewed the warning letter, the dismissal letter, and the record in light of Weston's appeal, the District's response thereto, and the relevant law. Based on this review, we find the dismissal and warning letters to be well-reasoned, adequately supported by the record, and in accordance with applicable law. Accordingly, the Board adopts the dismissal and warning letters as the decision of the Board itself, as supplemented by the discussion below.

DISCUSSION

Pursuant to PERB Regulation 32635(a), an appeal from dismissal must:

(1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;

(2) Identify the page or part of the dismissal to which each appeal is taken;

(3) State the grounds for each issue stated.

To satisfy the requirements of PERB Regulation 32635(a), the appeal must sufficiently place the Board and the respondent "on notice of the issues raised on appeal." (*State Employees Trades Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H (*SETC*); *City & County of San Francisco* (2009) PERB Decision No. 2075-M.) An appeal that does not reference the substance of the Board agent's dismissal fails to comply with PERB Regulation 32635(a). (*United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381 (Pratt); *Lodi Education Association (Hudock)* (1995) PERB Decision No. 1124; *United Teachers – Los Angeles (Glickberg)* (1990) PERB Decision No. 846.) Likewise an appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635(a). (*Pratt*; *SETC*; *Contra Costa County Health Services Department* (2005) PERB Decision No. 1742-M.)

Weston appealed the decision on the ground that the Office of the General Counsel unreasonably delayed the issuance of the dismissal. The District opposes the appeal on the grounds that Weston failed to allege a prima facie case of discrimination or retaliation, and that she has not alleged how any delay resulted in prejudice or any violation of statue or regulation, and therefore the claim does not constitute cause to sustain the appeal.

The appeal in this case does not reference any portion of the Office of the General Counsel's dismissal or otherwise identify the specific issues of procedure, fact, law or rationale to which the appeal is taken, the page or part of the dismissal to which the appeal is taken, or the grounds for each issue pursuant to PERB Regulation 32635(a). Thus, it is subject to dismissal on that basis alone. (*City of Brea* (2009) PERB Decision No. 2083-M.)

ORDER

The unfair practice charge in Case No. LA-CE-5723-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Martinez and Member Huguenin joined in this Decision.

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor
PUBLIC EMPLOYMENT RELATIONS BOARD
Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 322-3198
Fax: (916) 327-6377

November 27, 2013

Mamie Grant, Chairperson
Coalition for Employment and Economic Development
8939 S. Sepulveda Boulevard, Suite 102
Los Angeles, CA 90045

Re: *Lisa Ann Weston v. Los Angeles Unified School District*
Unfair Practice Charge No. LA-CE-5723-E
DISMISSAL LETTER

Dear Ms. Grant:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 22, 2012. Lisa Ann Weston (Charging Party) alleges that the Los Angeles Unified School District (District or Respondent) violated section 3543.5(a) of the Educational Employment Relations Act (EERA or Act)[1] by forcing Charging Party from her employment as a teacher.[2]

Charging Party was informed in the attached Warning Letter dated July 12, 2013, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it on or before July 29, 2013, the charge would be dismissed.

[1] EERA is codified at Government Code section 3540 et seq. PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

[2] The amended charge, like the original charge, fails to state the EERA section(s) alleged to have been violated by the District. Further, the amended charge now provides that it is being filed pursuant to the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq. [MMBA]). The MMBA covers employer-employee relations between public agencies, such as cities and counties, and their employees. (Gov. Code, §§ 3500, 3501(c), (d).) The MMBA does not cover public school employers and their employees. Where a charging party fails to allege that any specific section of the Government Code has been violated, the Board agent, upon review of the charge, may determine under what section the charge should be analyzed. (*State of California (Department of Corrections & Rehabilitation, Avenal State Prison)* (2010) PERB Decision No. 2111-S.)

Charging Party was granted an extension of time to file a first amended charge (amended charge). Charging Party filed a timely amended charge on August 2, 2013. The amended charge fails to cure the deficiencies identified in the July 12, 2013 Warning Letter.

Summary of Allegations in Amended Charge

The District mailed a notice to District employees advising them of the "conditions to retire, resign, or be laid-off due to a reduction in the workforce." Charging Party was on vacation when the District "apparently" mailed the notice to Charging Party. The notice required employees to submit a request within a three day period to speak at a hearing. The hearing was held while Charging Party was on vacation. Upon returning from vacation, Charging Party picked up her mail from the US Post Office in response to a notice that was left in her mail box. After reading the letter, Charging Party contacted the District to see if she could submit her request to be heard because of her inability to respond due to her vacation.

Following receipt of the notice, Charging Party submitted to the District a Certificated Resignation-Retirement Form (CRRF) on or about June 2, 2012, to resign due to retirement from the District. The information provided in the District's notice to employees regarding the work reduction was confusing. Charging Party submitted the CRRF in haste before she could get clarification and additional information regarding the notice.

Charging Party alleges that her requests to withdraw her resignation were "ignored and denied" by the District. Charging Party contacted Terry Wetzel (Wetzel), her supervisor with the District's Adult Education Department, to discuss rescinding the CRRF submitted by Charging Party. Wetzel wrote a letter dated June 11, 2012, addressed to the coordinator of DACE[3] Human Resources on behalf of Charging Party. The letter states that Charging Party has been an Adults with Disabilities tenured teacher since October 17, 1999, and had inadvertently submitted her resignation to the District. The letter further states that Charging Party has made DACE aware of Charging Party's premature decision to resign and that Charging Party is requesting to rescind her resignation and potentially continue her assignment with the District. The letter concludes by stating that "[w]e support Ms. Weston's request and hope she will remain available to join our DACE Adults with Disabilities faculty in the 2012-2013 school year." The letter was sent via facsimile to Charging Party.

Charging Party went to the office of the District's Chief Human Resource Officer, Vivian Ekchian (Ekchian), and met with one of her representatives. Charging Party wrote a letter to Ekchian dated June 29, 2012, regarding Charging Party's request to withdraw her resignation. Attached to the letter was the letter prepared by Wetzel, and letters of recommendation from two other supervisors.

[3] The amended charge does not explain the acronym DACE. It appears from the June 11, 2012 letter from Charging Party's supervisor, Wetzel, DACE is an acronym used for the District's Adult Education Department, or a program therein.

The amended charge alleges that "[t]he only response [Charging Party] received from [the District] on withdrawing her request for retirement was that when she made her request to rescind her retirement on or about June 11, 201[2][4] it had already been processed." However, when Charging Party contacted the California State Teachers' Retirement System (CALSTRS) on July 16, 2012, she was informed by a representative of that agency that her retirement had not yet been processed.

Charging Party appears to allege that the District's decision not to allow her to withdraw her resignation "was based on discretionary decisions by the UTLA[5] to rid its workforce of a certain group of employees that included her also because of her pre-existing medical condition." The workforce reduction caused Charging Party to lose her tenured teaching position of over twenty years and was done without regard to seniority or work experience.

The amended charge states that the July 12, 2013 Warning Letter "contains many PERB regulations and other cases" that do not appear to be applicable to the charge. The amended charge further states that "[t]here is nothing in any of the PERB decisions cited in the Warning Letter that would have prevented [the District] from honoring [Charging Party's] request to withdraw her resignation or give her the opportunity to present her matter at a hearing when she had made her request some two weeks before her scheduled retirement date. This denial was also made when other similar situated tenured employees had been allowed the same opportunities."

Discussion

The amended charge fails to state a prima facie case of a violation of EERA.

1. PERB's Jurisdiction

It appears that the basis of the charge and amended charge is that the District allegedly discriminated against, or acted unfairly towards, Charging Party by refusing to grant Charging Party's request to withdraw her resignation or give her an opportunity to present the matter at a hearing. The amended charge alleges that the District's refusal to allow Charging Party to withdraw her resignation was based on the District's "discretionary decisions...to rid its workforce or a certain group of employees that included [Charging Party] because of her pre-existing medical conditions." The amended charge further alleges that the District allowed employees that were similarly situated with Charging Party to withdraw their requests for resignation and that the District's workforce reduction was done without regard to seniority or

[4] The amended charge notes this date as June 11, 2013.

[5] The reference in the amended charge to UTLA appears to refer to the United Teachers Los Angeles, an employee organization. It is assumed for purposes of processing the amended charge that Charging Party intended to refer to the District, as the reference to the reduction in work force was a subject of the notice sent by the District to employees.

work experience. The amended charge also alleges that the District's justification for not allowing Charging Party to withdraw her resignation was untrue because CALSTRS informed Charging Party that it had not yet processed her retirement. Charging Party also contends that the District has failed to respond to her requests.

The EERA does not provide a remedy for all acts of perceived unfairness against public school employees. Rather, PERB's jurisdiction is limited to the determination of unfair labor practice claims arising under the EERA and other public sector labor statutes.[6] (*California School Employees Association, Chapter 245 (Waymire)* (2001) PERB Decision No. 1448.) PERB lacks jurisdiction to address claims of discrimination such as age, gender, or disability unless the claims also allege an independent violation of the EERA. (*Alum Rock Union Elementary School District* (2005) PERB Decision No. 1748; *Salinas City Elementary School District* (1996) PERB Decision No. 1131.) Moreover, PERB's jurisdiction does not extend to enforcement of the Education Code. (*Compton Unified School District* (2006) PERB Decision No. 1805.)

Thus, absent allegations in the charge that the District violated EERA by not allowing Charging Party to withdraw her resignation, PERB does not have jurisdiction over the claims alleged by Charging Party.

2. Discrimination

According to the amended charge, the July 12, 2013 Warning Letter "contains many PERB regulations and other cases" that do not appear to be applicable to the amended charge. The amended charge further states that "[t]here is nothing in any of the PERB decisions cited in the Warning Letter that would have prevented [the District] from honoring [Charging Party's] request to withdraw her resignation or give her the opportunity to present her matter at a hearing when she had made her request some two weeks before her scheduled retirement date."

As with the charge, the amended charge fails to allege under what theory the District acted unlawfully under EERA, or state the EERA section(s) alleged to have been violated by the District. Absent such allegations, the charge is evaluated under a discrimination theory. As noted in the July 12, 2013 Warning Letter, to state a prima facie case of discrimination, the charge must contain factual allegations to establish that: (1) the employee exercised rights

[6] EERA gives public school employees "the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations." (Gov. Code, § 3543(a).) EERA gives public school employees, subject to certain exceptions, the right as well "to represent themselves individually in their employment relations with the public school employer...." (*Ibid.*) EERA protects these rights by making it unlawful for a public school employer to "[i]mpose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights" under the EERA. (Gov. Code, § 3543.5 (a).)

under EERA; (2) the employer had knowledge of the exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action because of the exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210.)

The amended charge fails to allege any facts to establish that Charging Party engaged in any activity protected under EERA. Thus, the charge fails to state a prima facie case that the District engaged in conduct in violation of EERA.

Therefore, the charge is hereby dismissed based on the facts and reasons set forth herein and in the July 12, 2013 Warning Letter.

Right to Appeal

Pursuant to PERB Regulations, Charging Party may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code Regs., tit. 8, § 32635, subd. (a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, § 32635, subd. (b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs., tit. 8, § 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

M. SUZANNE MURPHY
General Counsel

By _____
Ronald Pearson
Senior Regional Attorney

Attachment

cc: Marcos F. Hernandez, Assistant General Counsel

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor
PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 322-3198
Fax: (916) 327-6377

July 12, 2013

Mamie Grant, Chairperson
Coalition for Employment and Economic Development
8939 S. Sepulveda Boulevard, Suite 102
Los Angeles, CA 90045

Re: *Lisa Ann Weston v. Los Angeles Unified School District*
Unfair Practice Charge No. LA-CE-5723-E
WARNING LETTER

Dear Ms. Grant:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 22, 2012. Lisa Ann Weston (Charging Party) alleges that the Los Angeles Unified School District (District or Respondent) violated section 3543.5(a)[1] of the Educational Employment Relations Act (EERA or Act)[2] by forcing Charging Party from her employment as a teacher.

Summary of Facts as Alleged

Charging Party is a certificated tenured teacher with 21 years of service with the District. Charging Party was employed by the District from 1990 until June 19, 2012. Charging Party worked with adults with disabilities. Recently, the District sent out pink slips to all certificated teachers. The teachers were given two options:

> Option 1: Teachers could resign and retire to keep their lifetime benefits.
>
> Option 2: Teachers could hold out and hope that they would be recalled and if they were not recalled they would risk losing everything.

[1] The charge fails to state the EERA section alleged to have been violated by the District. Where a charging party fails to allege that any specific section of the Government Code has been violated, the Board agent, upon review of the charge, may determine under what section the charge should be analyzed. (*State of California (Department of Corrections & Rehabilitation, Avenal State Prison)* (2010) PERB Decision No. 2111-S.)

[2] EERA is codified at Government Code section 3540 et seq. PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

The two options were confusing to the teachers and did not offer them much of a choice. Charging Party chose Option 1 in order to maintain her medical benefits as she has an illness that requires monthly expenditures for medication. On June 8, 2012, Charging Party turned in a form to the District electing to retire under Option 1. On June 11, 2012, Charging Party attempted to retrieve the form after hearing that the District was going to recall all teachers. Charging Party was informed that she could not rescind the form because it had already been processed. The charge alleges that it seemed the District was planning on forcing Charging Party out because the District had already processed the form even though the retirement date noted in the form was June 19, 2012, and Charging Party attempted to retrieve the form on June 11, 2012. The charge alleges that it appears the District "had it all planned that I would not be returning."

On June 29, 2012, Charging Party went to Beaudry[3] to appeal for her job and was told that she needed a written letter of support. Charging Party provided three letters of support, but two of the letters were rejected because they lacked signatures. The charge alleges that "it seemed like a code that was being used" by the District in rejecting the letters due to lack of signatures.

The charge alleges that "unfair practices are being done" as she knows of someone that resigned, retired, and was hired back by the District. Charging Party feels that the District chose to recall certain teachers, while "forcing out" others. The charge further alleges that "it seems like favoritism is taking place certain people have a chance and others don't." The charge notes that in 1990, Charging Party was set up by two individuals.[4] One of those individuals "fabricated lies" that may be in Charging Party's file, and that those lies have followed Charging Party in her career. The charge contends that the other individual has treated Charging Party poorly on account of those lies. On July 23, 2012, Charging Party requested to see her file. Charging Party was informed that she could see her file on September 13, 2012.

Charging Party studied hard to become a teacher and enjoys being a teacher. Charging Party is concerned about supporting herself in the future as she receives very little in retirement because she retired early. Charging Party has attempted to see her doctor but was "rejected" because she had no medical benefits. Charging Party is currently receiving unemployment. Charging Party does not want to be retired but is being forced to by the District.

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[3] The charge does not explain the reference to "Beaudry." The first page of the charge notes the mailing address for the District as "333 South Beaudry Ave."

[4] The charge does not explain the relationship or positions these two individuals have with the District.

Discussion

Charging Party's Burden

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." To do so, the charging party should include sufficient facts that describe the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

The charging party's burden also includes alleging facts showing that the unfair practice charge was timely filed; i.e., that the alleged unfair practice occurred no more than six months prior to the filing of the charge. (*Los Angeles Unified School District* (2007) PERB Decision No. 1929; *City of Santa Barbara* (2004) PERB Decision No. 1628-M.) PERB is prohibited from issuing a complaint with respect to any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.) The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (*Gavilan Joint Community College District* (1996) PERB Decision No. 1177.)

For the reasons that follow, the charge fails to allege sufficient facts to state a prima facie case of discrimination/retaliation under EERA.

Discrimination/Retaliation

To demonstrate that an employer discriminated or retaliated against an employee in violation of EERA section 3543.5(a), the charging party must show that: (1) the employee exercised rights under EERA; (2) the employer had knowledge of the exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action because of the exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*).) In determining whether evidence of adverse action is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (*Palo Verde Unified School District* (1988) PERB Decision No. 689.) In a later decision, the Board further explained that:

> The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment.

(*Newark Unified School District* (1991) PERB Decision No. 864; emphasis added; footnote omitted.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (*North Sacramento School District* (1982) PERB Decision No. 264), it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (*Moreland Elementary School District* (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee (*State of California (Department of Transportation)* (1984) PERB Decision No. 459-S); (2) the employer's departure from established procedures and standards when dealing with the employee (*Santa Clara Unified School District* (1979) PERB Decision No. 104); (3) the employer's inconsistent or contradictory justifications for its actions (*State of California (Department of Parks and Recreation)* (1983) PERB Decision No. 328-S); (4) the employer's cursory investigation of the employee's misconduct (*City of Torrance* (2008) PERB Decision No. 1971-M; *Coast Community College District* (2003) PERB Decision No. 1560); (5) the employer's failure to offer the employee justification at the time it took action (*Oakland Unified School District* (2003) PERB Decision No. 1529) or the offering of exaggerated, vague, or ambiguous reasons (*McFarland Unified School District* (1990) PERB Decision No. 786); (6) employer animosity towards union activists (*Jurupa Community Services District* (2007) PERB Decision No. 1920-M; *Cupertino Union Elementary School District* (1986) PERB Decision No. 572); or (7) any other facts that might demonstrate the employer's unlawful motive (*North Sacramento School District*, *supra*, PERB Decision No. 264; *Novato*, *supra*, PERB Decision No. 210).

1. Protected Activity

The charge fails to establish this element. To state a prima facie case of discrimination/retaliation, the charge must allege facts to show that Charging Party engaged in activity protected under EERA. Examples of protected activity include, but are not limited to, the filing of grievances or unfair practice charges (*Ventura County Community College District* (1990) PERB Decision No. 1323); seeking the assistance of a union regarding an employment matter (*Oakland Unified School District* (2008) PERB Decision No. 1965); serving as union representative (*Klamath- Trinity Joint Unified School District* (2005) PERB Decision No. 1778); participating on a union's bargaining team (*Ibid.*); speech critical of the employer if speech related to matters of legitimate concern (*Rio School District* (2008) PERB Decision No. 1986); and requesting union representation during meetings with management (*Los Angeles Unified School District* (1991) PERB Decision No. 874).

The charge fails to allege any facts to show that Charging Party engaged in protected activity.

2. Employer Knowledge

The charge fails to establish this element. As part of charging party's burden to state a prima facie case of discrimination/retaliation, the charge must allege facts to show that the District

had knowledge that Charging Party engaged in activity protected under EERA. As the charge fails to establish that Charging Party engaged in protected activity, similarly, the charge lacks factual allegations that the District had knowledge of Charging Party's protected activity.

3. Adverse Action

The charge alleges sufficient facts to establish this element. As part of charging party's burden to state a prima facie case of discrimination/retaliation, the charge must allege facts to show that the District took adverse action against Charging Party. As alleged, Charging Party, along with other employees, were issued "pink slips" and given two options, either to resign and retire and keep lifetime benefits or not resign/retire and hope to be recalled. The charge alleges that after Charging Party elected the option to retire, the District decided to recall the teachers. When Charging Party attempted to rescind her retirement, the District refused to allow Charging Party to do so. Termination or similar loss of employment is an adverse action. (See *Sacramento City Unified School District* (2010) PERB Decision 2129 [where Board found removal of substitute teacher's name from the school district's active substitute list was an adverse action because it effectively terminated the teacher's employment with the district].)

4. Nexus

The charge fails to allege sufficient facts to establish this element. As part of charging party's burden to state a prima facie case of discrimination/retaliation, the charge must allege facts to show a nexus, or connection, between the employer's adverse action and an employee's protected activity. As the charge fails to establish that Charging Party engaged in protected activity as noted above, the charge fails to establish the necessary nexus.

For these reasons the charge, as presently written, does not state a prima facie case.[5] If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by an authorized agent of Charging Party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the Respondent's representative and the original proof of service must be filed with

[5] In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

PERB. If an amended charge or withdrawal is not filed on or before **July 29, 2013**,[6] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Ronald Pearson
Senior Regional Attorney

RP

[6] A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)